IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 20920 of 2005

Between:

M. Narayana

..... PETITIONER

AND

The Commissioner of Proh. & Excise,

Government of Andhra Pradesh,

Hyderabad and 2 others

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the impugned action of the

3rd respondent in initiating proceedings vide his letter dated 27.12.2004 for seizing the vehicle of the petitioner vide Jeep bearing No.AP04-A-6714 in spite of the offence is compounded, as illegal and arbitrary, the present writ petition is filed.

It is the case of the petitioner that he is the owner of the Jeep bearing No.AP04-A-6714 and it was involved in a case for the offence punishable under Sec.34(a) of A.P.Excise Act. In the meanwhile, the said case was compounded and the petitioner was acquitted. Though the petitioner made an application for release of his vehicle, the 3rd respondent has not released his vehicle and initiated the impugned proceedings for seizure of his vehicle. Hence the present writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

The learned counsel for the petitioner contended that under Section 47 of the A.P.Excise Act, 1968 (for short 'the Act'), the authorities may release the vehicle on payment of value of thereon as estimated by such officer.

On the other hand, the learned Government Pleader for Prohibition and Excise contended that the order of confiscation under Section 46(2) of the Act shall not prevent from initiation of criminal proceedings against the accused, and the result of criminal proceedings either acquittal or conviction or otherwise under the provisions of the Act, will have no bearing on the order of confiscation.

The learned counsel for the petitioner placed strong reliance on Section 47 of the Act, where under it is stated that in a case where property seized and liable to be confiscated, the authority may release the same on payment of value of as estimated by such officer. But in this case, the competent authority has already passed the order of confiscation of vehicle and the same was confirmed by the appellate authority. As rightly contended by the learned Government Pleader for Prohibition

and Excise, the facts of the case on hand will come within the purview of Section 46-D of the Act, where under it is stated that the order of confiscation under sub-section (2) of Section 46 or Section 46-B shall not prevent from initiation of criminal proceedings against the accused and the result of criminal proceedings either acquittal or conviction or otherwise, will have no bearing on the order of confiscation. Simply because the offence alleged against the petitioner is compounded, it does not mean that the petitioner is entitled for release of vehicle on payment of value of the confiscated vehicle. Therefore, the writ petition is devoid of merit and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. However, all the remedies available to the petitioner, to challenge the confiscation order, are left open. No order as to costs.

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K.C. BHANU,J

Dated: 26.09.2005

Dsr